example of Louisiana in tearing down its ancient bastile and using the bricks to build comfortable, small unit barracks.

The Lease System of employing prisoners, still in vogue in Alabama, was condemned unsparingly in a stirring address by Hon. Isadore Shapiro, of Birmingham. Following his appeal, the Association passed a resolution reaffirming its opposition to the Lease System, and also deploring the idleness and inadequate industries found in many prisons. One prominent delegate expressed his conviction that no State had a moral right to make money from the work of its prisoners, and still make no provision for aiding their dependents.

By invitation and vote, the next meeting of the American Prison Association, in October, 1918, will be at Oklahoma City, Oklahoma, the enterprising new city of 125,000, and a general desire was expressed by the delegates, to carry the gospel of prison reform to this somewhat unknown field of the middle west.

F. Emory Lyon.

SEPARATION OF MILITARY AND CIVIL OFFENDERS—JURISDICTION OF CIVIL AND MILITARY COURTS—THE QUESTION OF PRACTICE

Who is to try the various offenders when civilians conspire with military authorities? The question treated in the article found in *La Giustizia Penale* of December 7, 1917, at page 1049, arose from the fact that certain soldiers in connection with certain citizens had committed a crime, punishment for which so far as the soldiers were concerned certainly had to be administered by the military tribunal. On the other hand, the civil authorities were equally clear in the case of Courla and Alesi, that the civil offenders must come before the ordinary civil courts. The question arising in the mind of the writer (Av. v. G. Escobedo) is that, while justice in the military courts might find the accused guilty, there might be cases in the civil courts in which the accomplices of the military offenders would go not merely unpunished, but triumphant; the result being that justice condemns the offenders in one case and releases them in the other.

It had been supposed that the question of separation of tribunals was definitely settled and that in the case of complicity with military offenders, all should be tried before military tribunals. As a matter of practice, however, each one was taken to the appropriate tribunal with an anomalous result. The justification is that there are

many anomalies in times of war which under less stress would be resolved more logically. Reference is made to the words of Louis Blanc, History of Ten Years, 1830-1840, volume 5, Paris, Felix Alcan, editor, pages 185 to 190. A synopsis of his words follows: The first of these three laws made famous under the name of the law of disjunction was the work of rage—a cruel revenge for the verdict of Strassburg. It aroused revolt in the public conscience. How can it be? For one same crime, different judges? A division of trials, with community in crime? And who knows? A few paces from the tribunal by which the guilty soldiers of the rebellion were condemned to death another tribunal acquitted their accomplices. How can it be that for an offense by the same offenders, at one time, in the same town, two gates are open? Here the funeral march of those condemned to death, and there an ovation to the guilty ones who had been acquitted and to their judges.

In Italy, by the recent Act of 1917, there was re-established the death penalty merely for offenders against military law. The remarks are more or less inconclusive. The principal efforts of the writer have been to expose the anomaly of permitting the soldiers and their accomplices to be tried by different tribunals before which the latter might possibly escape.

These questions are of particular interest at the present time in view of the fact that the United States courts will shortly be called upon to decide somewhat similar questions. It will be recalled that in a preceding number comment was made upon the condemnation of certain offenders before the military courts of Italy for fraud in connection with contractors for the supply of shoes and other articles to the Italian army, and in that case, the final jurisdiction of the military courts was sustained. Under the American system of jurisprudence, there is a distinction between the manner in which treason is to be dealt with when it comes in the form of fraud against the civil branches of the government which purchase supplies and when it arises directly in connection with actual military operations. The ordinary rules of military tribunals have universally regarded it as entirely within the proprieties of the situation to try a man by a courtmartial and condemn him to death for treason, and this in a trial opposed to the principle of Anglo-Saxon jurisprudence which demands an open and public trial, and the admission of the populace to the courtroom. The death penalty, however, has always been recognized in the proceedings of the Anglo-Saxon criminal courts and for this reason the difficulties of the Italian law which does not recognize the death penalty are not encountered.

There is nothing but the temper of the people to save the civil offender from the same penalty as the military offender, for from the very rise of our system of jurisprudence, it has been a principle that when contractors defraud the government, or defraud others who supply the government, these offenders will come before the civil courts, will have counsel and will appear on the trial like any other criminal who will be judged by a jury of his peers, and not by the summary processes of the courtmartial. It would seem that the problem must be resolved in some such fashion as this, namely, that the processes of the ordinary courts of justice are to be preferred in dealing with offenders in civil life and that once the offenses are committed directly on the field or within the limits of the army, the military should have complete jurisdiction. On the other hand, when it comes to matters of desertion, defalcations in the army, and the like, the courtmartial seems to be the tribunal best adapted to the trial of such offenders. In this instance reference must be had to a recent book, namely, the Life of Calhoun, by Wm. M. Meigs, of the Philadelphia Bar, author of "The Life of Thomas Hart Benton," "The Life of Charles Jared Ingersoll," "The Growth of the Constitution," and other works. An interesting discussion is found at page 227, of volume I, as to the difficulties encountered while Calhoun was Secretary of War under Monroe, and the officers of the War Department at that time prided themselves that they had fairly exterminated frauds, felonies and defalcations by officers of the military forces. This, of course, was more or less of a Utopian dream.

The article in the December issue of *Case and Comment* by Major Judge Advocate, U. S. R., Joseph Wheless, in which is outlined the procedure for the trial of offenders in the army, is of interest in this connection. It is there stated that under the Ninety-second, Ninety-third, and Ninety-fourth Articles of War, many non-military crimes such as murder, manslaughter, assaults, rape, arson, burglary, robbery, larceny, embezzlement, frauds, and perjury, when committed by persons subject to military law are triable and punishable by courtsmartial; and many such cases come for review to this office (Judge Advocate) and constitute the principal burden of its work. The author of this article asserts that the procedure of courtsmartial is the perfection of simplicity and expedition, putting to shame the archaic and cumbrous forms of the common and statutory criminal processes.

In comparison with the accurate processes of the common law by which the interests of the offender are so greatly cherished, we

should be more apt to call some of the procedures of the courtmartial somewhat crude. The samples given in his article of the specifications of charge are precisely those used in the Philadelphia police courts, and many examples of the police court activities could be cited to show that the difference between the two is very little. The proceedings are more or less of the same nature and these are uniformly the ones found in magistrates' courts and justice of the peace courts which have not stood the tests of centuries of time and use. It must be recalled when one adopts a perfectly simple and exceptional method of trying offenders, he must count on use and the tests of time, and when he condemns the apparently slow processes of the criminal law and of the common law, he must recall that he has unjustly condemned something which has stood that very test of time, and in spite of all criticisms has proved to be the best method of trial that mankind has been able to provide.

Allowance must be made for the necessities of military authority, as trials are conducted from an entirely different point of view from that of ordinary criminal courts in times of peace. When one premises that the country is in danger, in dealing with offenses against that branch of the government which is actually fighting to maintain the integrity of the people as a whole, it is a first principle that it must above all things maintain its authority and proceed summarily against all offenders whose acts threaten its integrity. That being the case, the proceedings before a court martial are more or less of a summary nature, and while this does not mean that the trial is itself unfair, the presumption against the offender is far greater than in the case of ordinary trials in times of peace.

As a matter of interest the writer quotes some findings and specifications from actual police cases in the City of Philadelphia. The similarity between these pleadings and those pleadings outlined by Major Judge Advocate Wheless is apparent. For example, in the case of *Gallagher* v. *The Mayor,* a case tried in Philadelphia and which went to the Supreme Court of Pennsylvania, it is set forth as follows:

BUREAU OF POLICE.

Patrolman Hugh J. Gallagher.

Charge No. 1. Intoxication on duty:

Specification No. 1. That while on duty you were in an intoxicated condition. This on April 7, 1913.

Pleads not guilty.

Charge No. 2. Conduct unbecoming an officer:

Specification No. 2. In that while intoxicated as aforesaid you did, without just cause, commit an assault and battery on one Oscar

Timberlake, of 2223 Stewart Street, at Schuykill Avenue, below Spruce Street.

Pleads not guilty.

This on April 7, 1913.

Now in deciding the case, the Police Board made the following findings:

"In the attached re-opened case of ex-Patrolman Hugh J. Gallagher, of the First District, the Court heard four witnesses who were not present at the first trial, all of whom testify they saw defendant on the day in question, and he was in a perfectly sober condition.

The Court in arriving at its conclusion has taken into consideration the following circumstances:

1. The defendant did not take any liquor, it being Jamaica ginger he took for cramps.

2. It is shown he merely brushed against plaintiff when passing, there being no conclusive evidence that he wilfully struck him.

3. It has been shown that defendant went to plaintiff's home and wanted to apologize for anything he might have done and that plaintiff refused to accept his apology, but intimated if there was $10.00 or $15.00 coming, he would not report him.

4. The previous good record of defendant which shows fourteen years' clean service.

We earnestly recommend that Patrolman Hugh J. Gallagher of the First District be reinstated to his former position with loss of pay from the date of his discharge from the service.

(Signed) Nicholas J. Kenny,
Captain of Police.
Wm. B. Mills,
Lieutenant of Police.
Chas. E. Kunkle,
Lieutenant of Police.

Approved: Geo. D. Porter (Sept. 9, 1913).
Approved: Rudolph Blankenburg (Sept. 10, 1913)."

If we compare this with some of the cases cited in the article at present under discussion, we find a host of abbreviations which certainly are not to be commended either as contributing to the brevity or to the definiteness of the proceedings. The lawyers' view of such a situation is far to be preferred to the brevity obtained by stringing out a dozen abbreviations in a line. In the next place there is a charge given on page 549 that "Private Lilborn L. Newton, * * * did wilfully, feloniously, with malice aforethought, unlawfully kill one John Sheffey, a human being, by shooting him with a rifle." No one acquainted with the ordinary procedure of the criminal courts could find an example of pleading which was more overburdened with verbiage. If the charge was murder, it should have been made murder, and no charge of murder would require one to prove that the person

killed was a human being. The apparent brevity of these proceedings comes more from the omission of the very thing which makes criminal proceedings ordinarily very long drawn out, namely, the mass of testimony both of ordinary witnesses and experts in the effort to give the accused criminal a fair trial. It is not intended by these criticisms to make unfavorable comment on the very interesting article written by Major Wheless nor to criticise his article as a whole, which gives to the public an interesting account of matters which are ordinarily considered extremely secret, but it is suggested that the simplicity in the proceedings is the same sort of simplicity as is that in the lower judicial tribunals and in our magistrates' courts, and that it is secured by the omission of what is generally considered essential.

It is interesting to note that in an article in this JOURNAL, Volume 8, Number 3, Mr. Robert W. Millar very ably discusses reforms in criminal pleadings. Pertinent to the present inquiry are models of criminal pleading under the English Indictment Act of 1915. In the case of murder for example, the complaint would read as follows: In case of murder—"*Statement of Offense*: Murder. *Particulars of Offense*: A. on the....day of.....in the County of.....murdered J. S." In the case of receiving stolen goods —"*Statement of Offense*: Receiving stolen goods contrary to Section 91 of the Larceny Act, 1861. *Particulars of Offense*: A. B. on the ....day of.....did receive a bag, the property of C. D., knowing the same to be stolen." In case of arson—"*Statement of Offense*: Arson, contrary to Section 3 of the Malicious Damage Act, 1861. *Particulars of Offense*: A. B. on the....day of..... in the County of.....maliciously set fire to a house with intent to injure or defraud." The draft submitted by Professor Mikell is along similar lines as is the case with the Massachusetts statute and the Illinois statute. When these forms are compared with the one given above of proceedings in the Police Courts of Philadelphia, which do not differ greatly from those in the Police Courts of New York, it may be seen that there is no vast difference between stating charges and placing under them specifications No. 1, No. 2, and the like, and giving the statement of an offense, and adding the particulars of offense. If the object of the proceedings is to make the accused acquainted with the nature of his offense, then the provisions requiring the omission of technical language are very apt. On the other hand, if the proceedings are designed to save the time of the court, and of the public, the adoption of a host of abbreviations might serve that purpose as well as anything else. It can only be repeated that the presumptions

in the case of a courtmartial are quite different from those in the case of a common law trial. It is also to be presumed that the courts-martial will be less rigid in applying strict interpretations as to the admissibility of evidence.

Returning again to our first problem of the separation of tribunals, it will be recalled that the assizes of Clarendon arose from precisely the same kind of a situation concerning the separation of tribunals when offenses were committed either by a layman with a churchman alone or by a combination either of the one sort or the other. The question in dispute was—whether church courts should try the offenders against the law or whether the common law courts should try them. One illustrious case is that of Judge Salmon de Roffe or Solomon of Rochester, who in the time of Edward I was apparently poisoned by a clerk in the church, and it was a long time before the question of where the clerk should be tried was settled. The celebrated case of St. Thomas of Canterbury is known to every reader of history, and how this famous prelate who fought vigorously for the trial of churchmen by the church, lost his life in a conflict with the king. If the king had lost, the authority of the church to punish such offenders and to maintain its own system of jurisprudence would have persisted. In the present case, the question is one of a more or less temporary nature inasmuch as it is decidedly to be hoped that war in general and this war in particular will not be of long duration, but problems of this kind are sure to arise in the very near future.

GEORGE F. DEISER.

DELINQUENCY IN WAR TIME

Our attention has repeatedly been called to an increase in the volume of juvenile delinquency in our cities and towns since the beginning of the European war. The *London Times* on November 8, 1916, quoted statistics to show that in various localities in England, in the course of the twelve-month preceding that date, juvenile delinquency had increased as much as 50% to 75%. (See this JOURNAL, March, 1917, p. 925.). Mr. Joel D. Hunter in this JOURNAL for July, 1917, p. 287, quotes from the Report on Dependent and Delinquent Children for 1916 from the Province of Alberta, which shows an increase of 25% in the total cases of juvenile delinquency in that province as compared with the preceding year.

Both in England and in Canada this unwelcome phenomenon has been believed to be due chiefly to the fact that in thousands of in-